



## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2018-0077; Notice 1]**

### **Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Cooper Tire & Rubber Company (Cooper Tire) has determined that certain Cooper brand tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Cooper Tire filed a noncompliance report dated May 4, 2018, and subsequently petitioned NHTSA on May 21, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- Mail: Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to [https://www.regulations.gov](https://www.regulations.gov/), including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also

be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000, (65 FR 19477-78).

## **SUPPLEMENTARY INFORMATION:**

### **I. Overview:**

Cooper Tire has determined that certain Cooper brand tires do not fully comply with paragraph S5.5.1 of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR part 571.139). Cooper Tire filed a noncompliance report dated May 4, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on May 21, 2018, pursuant to 49 U.S.C. 30118(d) and 49 CFR Part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of Cooper Tire's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of this petition.

### **II. Tires Involved:**

Approximately 327 Evolution H/T size 245/70R16 tubeless radial tires, manufactured between June 4, 2017, and June 10, 2017, are potentially involved.

### **III. Noncompliance:**

Cooper Tire explains that the noncompliance is that the subject tires were molded with an incorrectly ordered serial week and year on the outboard sidewall as required by paragraph

S5.5.1(b) of FMVSS No. 139. Specifically, the subject tires were manufactured with serial week “1723” when they should have been manufactured with serial week “2317.”

#### **IV. Rule Requirements:**

Paragraph S5.5.1(b) of FMVSS No. 139, includes the requirements relevant to this petition:

- For tires manufactured on or after September 1, 2009, each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.
- Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other side wall.

#### **V. Summary of Petition:**

Cooper Tire described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Cooper Tire submitted the following arguments:

1. While the 327 tires in the subject population contain an incorrectly ordered week and year for the fourth grouping of TIN numbers, they are in all other respects properly labeled and meet all performance requirements under the FMVSS's. The serial week of manufacture has no bearing on the performance or operation of a tire and does not create

a safety concern to either the operator of the vehicle on which the tires are mounted, or the safety of personnel in the tire repair, retread, and recycle industry.

2. Tire registration and traceability will not be interrupted. Cooper Tire's internally controlled online registration system has been modified to be able to accept the incorrectly ordered 1723 date code. Any tires registered with that date code and TIN will be identified properly as having been manufactured in the 23rd week of 2017. This will ensure that Cooper Tire is able to identify these tires in the event they must be recalled. If a recall is necessary, Cooper Tire will explain the date issue in any recall notice.
3. Cooper Tire can also confirm that it will not use the same full Tire Identification Number in year 2023. Cooper Tire uses the third grouping of numbers within the TIN to identify the SKU or make of the tire, as is permitted at the option of the manufacturer under the regulations. *See* 49 CFR. 574.5(g)(3). In this case, IJ9 is the third grouping and indicates that this tire is a Cooper Evolution H/T. While Cooper Tire has not yet set its year 2023 production schedule, if Cooper Evolution H/T tires are made in year 2023, Cooper Tire will assign another unique identifier so that the tires made in year 2017 will be distinguishable from the tires made in year 2023. This will eliminate the potential for SKUs produced in year 2017 to be confused with those produced in year 2023, and will allow for Cooper Tire to readily identify the 327 tires that are the subject of this petition.
4. NHTSA has granted a number of previous inconsequentiality petitions relating to mislabeled TINs, provided that the mislabeling does not affect the manufacturer's ability to identify the tires. "The purpose of the date code is to identify a tire so that, if necessary, the appropriate action can be taken in the interest of public safety such as, a safety recall notice." *Bridgestone/Firestone, Inc.; Grant of Application*, 64 FR 29080

(May 28, 1999); see also Cooper Tire & Rubber Company, Grant of Application, 68 FR 16,115 (April 2, 2003) (same). Accordingly, NHTSA has explained in multiple instances that "[t]he agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the ability of the tire manufacturer to identify the tires in the event of recall." Bridgestone/Firestone, Inc., Grant of Application, 66 FR 45076 (August 27, 2001). As a result, NHTSA has granted petitions and found that TIN noncompliance is inconsequential to safety in cases where the TIN is out of sequence or mislabeled, including where the week and/or year of manufacture is mislabeled and even where the date code is missing altogether. See, e.g., Bridgestone Firestone North America Tire, LLC, Grant of Petition, 71 FR 4396 (January 26, 2006) (granting petition where date code was missing because manufacturer could still identify and recall the tires); Cooper Tire & Rubber Company, Grant of Application, 68 FR 16115 (April 2, 2003) (granting petition where tires were labeled with wrong plant code, because "the tires have a unique DOT identification"); Bridgestone/Firestone, Inc., Grant of Application, 66 FR 45076 (Aug. 27, 2001) (granting petition where the date code was labeled incorrectly, because "the information included on the tire identification label and the manufacturer's tire production records is sufficient to ensure that these tires can be identified in the event of a recall"); Bridgestone/Firestone, Inc.; Grant of Application, 64 Fed. Reg. 29,080 (May 28, 1999) (granting petition where the wrong year was marked in the date code on the tires); Cooper Tire & Rubber Company; Grant of Application, 63 FR 29059 (May 27, 1998) (granting petition where the date code was missing where tires had a unique TIN for recall purposes); Bridgestone/Firestone, Inc., Grant of Application, 60 FR 57617 (November 16, 1995) (granting petition where the

date code was out of sequence); Uniroyal Goodrich Tire Company; Grant of Petition, 59 FR. 64232 (December 13, 1994) (granting petition where week and year were mislabeled on tires). As with other cases in which NHTSA has granted petitions for a determination of inconsequential noncompliance, Cooper Tire will be able identify the tires that are the subject of this petition in the event of recall. As described above, these tires will have a unique DOT identifier that will allow for Cooper Tire to identify and recall them in the event that any issues arise in the future.

5. Cooper Tire has taken steps over the last two years to add additional checks in its processes to prevent TIN errors. For example, Cooper Tire has implemented software that allows for a specific plant to choose only its plant code from a drop-down menu when engraving that portion of the TIN. Date codes are updated on a weekly basis and often produced in advance of the serial week. The serial week and year is manually entered in the system and then engraved on a plug for use. Cooper Tire is working to prevent future issues and evaluating the possibility of additional technology which will restrict the selection of date codes to a contained period of time. Cooper Tire is also reviewing its inspection processes to ensure that errors of this sort are identified earlier in the process.

Cooper Tire concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Cooper Tire's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov>

and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Cooper Tire no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Cooper Tire notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Claudia W. Covell,**

*Acting Director, Office of Vehicle Safety Compliance.*

**Billing Code 4910-59-P**

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